

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nathaniel Flack	Team: Squad #3	CCRB Case #: 201605733	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/30/2016 2:43 AM	Location of Incident: Corner of Nassau Street and Maiden Lane, and the 1st Precinct stationhouse	Precinct: 01	18 Mo. SOL 12/30/2017	EO SOL 12/30/2017	
Date/Time CV Reported Thu, 06/30/2016 7:52 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 06/30/2016 7:52 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Robinson Martinez	27247	947224	PBMS SU
2. SGT Frederic Ortiz	03659	935440	PBMS SU
3. POM John Antoniades	19885	954495	PBMS SU

Officer(s)	Allegation	Investigator Recommendation
A.POM Robinson Martinez	Abuse: At the corner of Nassau Street and Maiden Lane in Manhattan, Police Officer Robinson Martinez stopped § 87(2)(b)	
B.POM Robinson Martinez	Force: At the corner of Nassau Street and Maiden Lane in Manhattan, Police Officer Robinson Martinez pointed his gun at § 87(2)(b)	
C.POM John Antoniades	Abuse: At the corner of Nassau Street and Maiden Lane in Manhattan, Police Officer John Antoniades searched the vehicle in which § 87(2)(b) was an occupant.	
D.POM Robinson Martinez	Abuse: At the corner of Nassau Street and Maiden Lane in Manhattan, Police Officer Robinson Martinez searched the vehicle in which § 87(2)(b) was an occupant.	
E.SGT Frederic Ortiz	Abuse: At the corner of Nassau Street and Maiden Lane in Manhattan, Sergeant Frederic Ortiz searched the vehicle in which § 87(2)(b) was an occupant.	
F.SGT Frederic Ortiz	Abuse: At the 1st Precinct stationhouse, Sergeant Frederic Ortiz detained § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via telephone on June 30, 2016.

At approximately 2:43 am on June 30, 2016, § 87(2)(b) was on his way to work as an § 87(2)(b) in Manhattan. He was driving a U-Haul truck, which he was using to transport a motorcycle to have it repaired by a coworker. The motorcycle belonged to § 87(2)(b)'s cousin, § 87(2)(b). On his way to § 87(2)(b), § 87(2)(b) took a detour through Manhattan's financial district, to retrace his steps in search of his cellphone, which he had lost earlier that day. PO Robinson Martinez and Sergeant Frederic Ortiz, who were assigned to the area to investigate a pattern of motorcycle thefts, noticed the U-Haul and followed it for several blocks in an unmarked RMP. PO Martinez and Sgt. Ortiz lost sight of § 87(2)(b) after he parked and exited the truck at the corner of Nassau Street and Maiden Lane to search for his cellphone on foot. PO Martinez, now on foot after exiting the RMP, located and observed § 87(2)(b) as he returned to the truck around 10 minutes later. When § 87(2)(b) opened the back gate of the truck to check on the motorcycle before continuing to drive to work, PO Martinez saw the motorcycle and stopped § 87(2)(b) at gunpoint (**Allegations A and B**). After § 87(2)(b) was placed in handcuffs, PO John Antoniadis, PO Martinez, and Sgt. Ortiz entered the back of the U-Haul truck to obtain the motorcycle's license plate number (**Allegations C, D, and E**). While still on the scene, § 87(2)(b) provided the name of his cousin, § 87(2)(b) as the owner of the motorcycle. PO Martinez and Sgt. Ortiz called Central Command to request the name of the plate number's registered owner. When Central Command notified Sgt. Ortiz that the license plates were in fact registered to a § 87(2)(b), § 87(2)(b) was detained and brought to the 1st Precinct stationhouse (**Allegations F and G**). Later the same morning, PO Martinez and Sgt. Ortiz and brought § 87(2)(b) to the 1st Precinct, at which point he told the officers he had sold the motorcycle to § 87(2)(b). § 87(2)(b) was released at approximately 11:20 am with a voided arrest.

The CCRB obtained surveillance video of the arrest from the building at 33 Liberty Street (Board Review 01). The video shows PO Martinez pointing his firearm at § 87(2)(b) as well as the subsequent vehicle search.



201605733_20160916_1032_DM.mp4

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case is unsuitable for mediation due to a lawsuit.
- § 87(2)(b) has filed a notice of claim regarding this incident, for an unspecified amount, with the NYC Office of the Comptroller (Board Review 02). He is seeking damages for loss of liberty, pain and suffering, and emotional distress. The date of the filing was not provided.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint. § 87(2)(b)
§ 87(2)(b)
- PO Robinson Martinez has been a member of the NYPD for eight years, and has been a subject officer in five prior complaints, containing a total of seven allegations. No allegations have been substantiated. § 87(2)(g)
§ 87(2)(g)
- Sgt. Frederic Ortiz has been a member of the NYPD for twelve years. He has been the subject of twelve prior CCRB complaints, containing thirty allegations. Four of these allegations have been substantiated, all part of 201602490. The substantiated allegations were two stop allegations and two force allegations. The CCRB's recommended disposition for these allegations was Command Discipline A. The NYPD discipline remains pending. § 87(2)(g)
- PO John Antoniadis has been a member of the NYPD for three years. He has been a subject officer in one prior CCRB complaint. He was the subject of three allegations, all unsubstantiated. § 87(2)(g)

Potential Issues

- § 87(2)(b) did not provide a sworn statement, and has not cooperated with the investigation since providing a phone statement on July 6, 2016 (Board Review 05). Attempts to contact § 87(2)(b) through his attorney were unsuccessful. The investigation proceeded based on video footage.
- § 87(2)(g)
§ 87(2)(g)

Findings and Recommendations

Allegations Not Pleaded

- § 87(2)(b) alleged property damage to his cousin's motorcycle. Specifically, he said that the motorcycle was on its side when it was returned to him upon his release, and had suffered damage from this, including scratches and a leak. However, he did not witness any damage being done to the motorcycle by police officers, and the video shows that the motorcycle was already on its side in the U-Haul prior to his arrest.

Allegation A – Abuse of Authority: At the corner of Nassau Street and Maiden Lane in Manhattan, Police Officer Robinson Martinez stopped § 87(2)(b)

It is undisputed that § 87(2)(b) was stopped by PO Martinez.

§ 87(2)(b) did not provide a verified statement. During a phone statement provided to the CCRB on July 6, 2016, § 87(2)(b) said on the date of the incident he was looking for a lost cell phone in the Financial District. § 87(2)(b) was driving a rented U-Haul truck, which contained a motorcycle belonging to his cousin and roommate, § 87(2)(b). § 87(2)(b) was transporting the motorcycle to his workplace, § 87(2)(b), so that a coworker could repair it. § 87(2)(b) parked the truck in the vicinity of Nassau Street and John Street in Manhattan, and exited

the truck in order to search for the lost cellphone on foot. After he finished searching unsuccessfully for the phone, § 87(2)(b) opened the gate of the truck to check on the condition of the motorcycle. As he began to close the gate, he heard a voice saying, “Put your hands up.” As § 87(2)(b) turned around, he saw PO Martinez approaching him with his firearm pointed at him (discussed below under Allegation B). § 87(2)(b) was placed in handcuffs shortly thereafter.

PO Martinez testified in his CCRB interview (Board Review 06) that prior to beginning his tour on June 30, 2016, Sgt. Ortiz informed him of a recent crime pattern in which motorcycles in the financial district had been stolen by individuals operating vans, and potentially other types of cargo vehicles. PO Martinez had already been aware of the pattern based on a flyer posted at the 1st Precinct stationhouse (Board Review 07). PO Martinez and Sgt. Ortiz were parked in an unmarked RMP at the corner of William Street and Fulton Street in the Financial District. PO Martinez was the operator of the vehicle, while Sgt. Ortiz was seated in the passenger seat. PO Martinez saw a U-Haul truck driving northbound on William Street at a “relatively slow” speed of less than 20 mph. PO Martinez followed the U-Haul as it made a series of turns “going east, going south, going west, going back north, going back south.” PO Martinez said it was unusual to see a U-Haul driving in the Financial District at such a late hour, and suspected the vehicle of being involved in the pattern of motorcycle thefts due to the large size of the vehicle, the time of night, and the manner in which the vehicle was driving.

After travelling what he estimated to be eight blocks, PO Martinez saw the U-Haul park at the corner of Nassau Street and Maiden Lane near a roadblock composed of unmarked RMPs. PO Martinez continued driving past the U-Haul at this time, parking the RMP on the next block. PO Martinez and Sgt. Ortiz exited the RMP, but were unable to immediately locate § 87(2)(b) and separated to look for him on foot. Approximately 10 to 15 minutes later, PO Martinez saw § 87(2)(b) walking normally towards the U-Haul, still at the location where it had been parked earlier. § 87(2)(b) walked to the back of the truck and opened the gate, revealing a motorcycle within.

PO Martinez saw the motorcycle as soon as the gate was opened. The motorcycle was lying on its side, which PO Martinez believed to be indicative of it being stolen. He reasoned that a person transporting their own motorcycle would not place it on its side, because this can damage a motorcycle, while a thief in a hurry could be expected to place a motorcycle on its side. PO Martinez told Sgt. Ortiz via his cellphone that he intended to stop § 87(2)(b). After § 87(2)(b) exited the back of the truck and began to close the gate, PO Martinez announced his presence. After receiving no response for approximately five seconds, he announced himself again, drew his weapon, and held § 87(2)(b) briefly at gunpoint (discussed below under Allegation B) until PO Ariel Eusebio arrived and handcuffed § 87(2)(b).

Sgt. Ortiz’s CCRB interview (Board Review 09) generally corroborated PO Martinez’s testimony. Sgt. Ortiz said that when he first saw the U-Haul from the parked RMP, it slowed to a “creep” as it passed a motorcycle on William Street, before accelerating to its prior speed. Sgt. Ortiz described § 87(2)(b) appearing to evade a road block, which he said was created by the Department of Sanitation, before parking in an illegal spot and exiting the U-Haul quickly. When he returned to the scene, he observed a motorcycle on its side in the back of the U-Haul, and § 87(2)(b) was already in handcuffs.

The video shows PO Martinez standing on the corner of Nassau Street and Maiden Lane. § 87(2)(b) exits the cab of the truck, walks towards the back, and enters after opening the gate, revealing a motorcycle on its side. When § 87(2)(b) climbs out of the back and begins to close the gate, PO Martinez approaches PO Martinez and holds him at gunpoint for 10 seconds until PO Eusebio appears, running from behind § 87(2)(b) and placing him in handcuffs.

PO Martinez provided the investigation with a copy of a flyer describing a pattern of motorcycle theft using vans in the 1st Precinct, produced by the 1st Precinct Detective Squad (Board Review 7). The flyer referenced PIM alert number 2016- 084/087, which documented 28 motorcycle thefts reported in Patrol Borough Manhattan South during the six months preceding the incident, including eight in the confines of the 1st Precinct (Board Review 08). The investigation also obtained a list of grand larceny auto complaints filed with the 1st Precinct between January 1, 2016 and June 30, 2016 (Board Review 28), which included 18 complaints regarding stolen motorcycles, a majority of which occurred in the late night or early morning hours.

An officer may stop an individual when he reasonably suspects that a person has committed, is committing, or is about to commit a crime. People v. Debour, 40 NY 2d 210 (Board Review 10). Reasonable suspicion is the quantum of knowledge sufficient to induce an ordinarily prudent and cautious man under the circumstances to believe criminal activity is at hand. People v Cantor, 36 NY2d 106 (Board Review 11).

§ 87(2)(g)

[REDACTED]

Allegation B – Force: At the corner of Nassau Street and Maiden Lane in Manhattan, Police Officer Robinson Martinez pointed his gun at § 87(2)(b)

It is undisputed that PO Martinez pointed his firearm at § 87(2)(b)

§ 87(2)(b) said that, as he closed the gate of the U-Haul, he heard someone say, “Put your hands up.” As he turned around, he saw PO Martinez, with his firearm pointed at him. § 87(2)(b) estimated that the firearm was about six inches from his face.

PO Martinez testified that he verbally identified himself as a police officer and asked § 87(2)(b) to raise his hands in a “loud and sturdy voice.” PO Martinez observed no response, and believed that § 87(2)(b) was ignoring him. PO Martinez waited five seconds and then drew his firearm, pointing it at § 87(2)(b) and issuing the same command again in an even louder voice. Prior to being shown the video, PO Martinez testified that § 87(2)(b) had been standing “sideways” outside of the truck, with his hands in front of him and his back to PO Martinez. After viewing

the video, PO Martinez said he remembered § 87(2)(b) had been inside the back of the truck when the first command was issued. PO Martinez testified that he maintained a distance of a car's length from § 87(2)(b) while his weapon was drawn, and did not approach § 87(2)(b) any closer than this until PO Eusebio had appeared and placed him in handcuffs.

PO Martinez said he drew his gun because he feared for his safety due to the time of night, the violent nature of the crime he was investigating, the size of § 87(2)(b) and the fact that he had not complied with a first command. PO Martinez said that grand larceny was one of the seven major violent crimes. After prompting from counsel, PO Martinez acknowledged he was referring to the FBI's list of seven major felonies. PO Martinez estimated that § 87(2)(b) is approximately 6'3" and 250 lbs. PO Martinez described himself as 6' tall and 217 pounds. PO Martinez said that he did not observe any bulges on § 87(2)(b) and that nothing in § 87(2)(b)'s movements suggested that he was carrying a weapon. PO Martinez did not observe § 87(2)(b) holding or using any tools or weapons, and said that the scene was lit by streetlights.

An arrest report for § 87(2)(b) for § 87(2)(b) from 2012 listed his height as 6' 1" and his weight as 220 lbs. (Board Review 03).

At the opening of the video, PO Martinez stands on the northwest corner of Nassau and Maiden. At 21 seconds, § 87(2)(b) opens the back of the truck, revealing a motorcycle lying on its side. He then climbs into the truck and examines the motorcycle for approximately 20 seconds, before exiting and beginning to close the gate. At 51 seconds, PO Martinez walks towards § 87(2)(b) whose back is turned to him. PO Martinez's right arm is raised and extended towards § 87(2)(b) while holding his gun. At 53 seconds, § 87(2)(b) turns to face the approaching PO Martinez, taking several steps backwards, and raising his hands. PO Martinez continues advancing towards § 87(2)(b) until he is within several feet of him. PO Martinez's right arm is still raised and extended, and § 87(2)(b) places his hands behind his back as PO Ariel Eusebio appears from the right side of the frame, running towards § 87(2)(b) and handcuffing him.

An officer can draw his firearm when he has a reasonable fear for his or another's personal safety. While the standard is ultimately an objective one, due deference should be given to the judgment of the officer at the time and scene of the incident. PD v. Gliner, OATH Index No. 955/00 (Board Review 12). PG 221-01 states that the decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present (Board Review 13).

Grand larceny is not among the list of violent felonies enumerated in New York Penal Law § 70.02 (Board Review 14). PG 207-01 states that grand larceny is among the seven major felonies (Board Review 15).

§ 87(2)(g)
[REDACTED]

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[REDACTED]

§ 87(2)(g)

Allegation C – Abuse of Authority: At the corner of Nassau Street and Maiden Lane in Manhattan, Police Officer John Antoniades searched the vehicle in which § 87(2)(b) was an occupant.

Allegation D – Abuse of Authority: At the corner of Nassau Street and Maiden Lane in Manhattan, Police Officer Robinson Martinez searched the vehicle in which § 87(2)(b) was an occupant.

Allegation E – Abuse of Authority: At the corner of Nassau Street and Maiden Lane in Manhattan, Sergeant Frederic Ortiz searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Antoniades, PO Martinez, and Sgt. Ortiz entered the back of the U-Haul.

§ 87(2)(b) said that he was at the incident location to search for his lost cellphone. He did not relate any observations of the U-Haul search. He only noted that before being taken to the precinct, he was questioned by PO Martinez, who “assumed” that he had stolen the motorcycle.

According to PO Antoniades’s CCRB testimony (Board Review 16), he received a call on his cell phone from Sgt. Ortiz saying that he and PO Martinez were observing a van at John Street and Nassau Street, and to head towards the location of the van. Sgt. Ortiz did not provide PO Antoniades with any additional information about the vehicle being observed or why it had aroused suspicion and required additional personnel on scene. It took PO Antoniades approximately 5 minutes to arrive at John Street and Nassau Street, where he saw a man in handcuffs and a motorcycle hanging in the back of a U-Haul. The only two officers on the scene were PO Martinez and PO Eusebio. PO Antoniades proceeded to enter the back of the U-Haul to “find out if [the motorcycle] was stolen.” He did this immediately after arriving and making “sure that the other officers were okay.” PO Antoniades did not hear PO Martinez or PO Eusebio say anything, or observe them do anything, when he arrived on the scene. They did not provide any information about any investigation they had conducted or intended to conduct on the motorcycle, and PO Antoniades did not ask. PO Antoniades did not hear § 87(2)(b) say anything on the scene of the incident, including prior to the entering the U-Haul. The motorcycle was “all the way in the back” of the truck, and PO Antoniades had to enter the back of the truck in order to inspect it. He noted the license plate number and looked for a “scratched-off” VIN number or a broken ignition, which he described as signs of larceny. PO Antoniades could not recall whether he was able to observe any of these signs, either before or after examining the motorcycle within the truck. PO Antoniades said that the U-Haul was later entered again by Sgt. Ortiz and PO Martinez to “double check” PO Antoniades’s search.

PO Martinez testified that after § 87(2)(b) was in handcuffs, but prior to entering the back of the U-Haul, he asked § 87(2)(b) who the motorcycle in the truck belonged to. § 87(2)(b) replied

that the motorcycle belonged to his cousin § 87(2)(b) PO Martinez asked § 87(2)(b) for the registration paperwork for the motorcycle, which § 87(2)(b) said he did not have with him. PO Martinez then asked if § 87(2)(b) could call § 87(2)(b) to verify the ownership of the vehicle. § 87(2)(b) replied that he did not have his phone with him because he had lost it. PO Martinez said that he questioned § 87(2)(b) only regarding the ownership of the motorcycle, and nothing else. PO Martinez said that he then entered the back of the U-Haul, took down the license plate number of the motorcycle, and called a registration search in to Central Command to verify § 87(2)(b)'s story. PO Martinez gave varying accounts of when § 87(2)(b) was formally placed under arrest, saying at first that he was under arrest when he was first placed in handcuffs, and later that he was only placed under arrest after the results of the license plate search were returned.

Sgt. Ortiz generally corroborated PO Martinez's testimony. He said that both he and PO Martinez entered the U-Haul to take down the motorcycle's license plate number. Sgt. Ortiz initially said that he asked § 87(2)(b) for the motorcycle owner's name prior to entering the U-Haul, but later said that he asked him after taking down the license plate. According to Sgt. Ortiz, § 87(2)(b) was not formally under arrest until after the results of the license plate search.

In the video, PO Antoniades arrives on the scene in an unmarked RMP at the 1:10 mark. The gate of the truck is approximately half open, and PO Eusebio appears to be handcuffing § 87(2)(b). As PO Antoniades exits his RMP and approaches the U-Haul, PO Eusebio opens the gate fully. PO Antoniades climbs into the back of the truck with a flashlight at 1:45. He stands over the motorcycle, shining the flashlight on it. After 10 seconds, he leaves the back of the truck. PO Martinez enters the vehicle at the 2:55 mark, approximately 2 minutes after § 87(2)(b) was placed in handcuffs. The camera subsequently zooms out, rendering PO Martinez's actions within, and any subsequent entries, indiscernible.

A vehicle has been searched when an officer breaches the plane of a doorway. People v. Hernandez, 238 A.D.2d 131 (Board Review 18). A vehicle may be searched without a warrant pursuant to the "automobile exception" if law enforcement officials have probable cause to believe that the vehicle contains contraband, evidence of a crime, a weapon or some means of escape. People v. Smith, 98 A.D.3d 590 (Board Review 19). During an encounter in which officers have reasonable suspicion that a parked vehicle with an already open door contains contraband, officers may enter the vehicle pursuant to an inquiry into the ownership of the vehicle. People v. Braan, 80 A.D.2d 920 (Board Review 23). When acting on reasonable suspicion that the operator committed a crime, officers may take the minimally intrusive and permissible action of stepping into a van in order to scan its interior. People v. March, 257 A.D.2d 631 (Board Review 24).

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Per the video, approximately two minutes elapsed between when PO Martinez stopped § 87(2)(b) and when he searched the vehicle. § 87(2)(g)

Allegation F – Abuse of Authority: At the 1st Precinct stationhouse, Sergeant Frederic Ortiz detained § 87(2)(b)

§ 87(2)(b) said that, after being placed in handcuffs and questioned, he was brought to the stationhouse where he was held "behind bars." PO Martinez assumed that § 87(2)(b) had stolen the motorcycle. § 87(2)(b) was released without charges after police were able to confirm that his cousin held the title to the motorcycle. He noted that though his cousin held the title to the motorcycle, the motorcycle was not "registered" to his cousin at the time of the incident, because it was not "operable."

PO Martinez said § 87(2)(b) told him that the motorcycle belonged to his cousin, § 87(2)(b). § 87(2)(b) did not have paperwork showing § 87(2)(b) owned the motorcycle, and could not call § 87(2)(b) because he had lost his cellphone. PO Martinez called Central Command to check the license plate number. When he was informed that it was registered to § 87(2)(b) not § 87(2)(b), § 87(2)(b) was placed under arrest and taken to the 1st Precinct stationhouse.

PO Martinez identified a police report filed previously by § 87(2)(b) regarding a motorcycle that was stolen in Manhattan. PO Martinez's memo book shows that over the course of the morning of the incident, he made several contact attempts to § 87(2)(b) before arranging for him to travel to the stationhouse and view the motorcycle. According to PO Martinez, § 87(2)(b) told the officers that this was not the motorcycle he had reported stolen, and that he had sold this motorcycle to § 87(2)(b). After speaking to § 87(2)(b) to confirm that he had allowed § 87(2)(b) to transport the motorcycle, Sgt. Ortiz made the decision to release § 87(2)(b).

Sgt. Ortiz generally corroborated PO Martinez's testimony, adding that he made the decision to arrest § 87(2)(b) and take him to the stationhouse.

§ 87(2)(b) in his telephone statement to the CCRB (Board Review 26 and Board Review 27), said that he traveled to the 1st Precinct after being told a motorcycle belonging to him had been recovered. § 87(2)(b) had earlier filed a complaint report with the NYPD regarding a stolen motorcycle. When he arrived at the 1st Precinct and was shown the motorcycle in the U-Haul, he

informed the officers that this motorcycle had been sold to § 87(2)(b) and was stolen. He subsequently provided documentation of the sale to officers before leaving.

Records obtained from the NY State Troopers show that a search was conducted for the license plate of § 87(2)(b) motorcycle at 2:52 am (Board Review 25). PO Anoniades's memo book shows § 87(2)(b) was taken to the stationhouse at 3:10 am. Sgt. Ortiz's memo book (Board Review 20) shows § 87(2)(b) being contacted at 3:58 am, arriving at the stationhouse at 9:30 am, and § 87(2)(b) being released at 11:20 am after a call with § 87(2)(b).

In order to determine whether an officer had probable cause to make an arrest, a court must examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause. Maryland v. Pringle, 540 U.S. 366; 124 S. Ct. 795 (Board Review 29).

§ 87(2)(g)
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[REDACTED]

Squad: 3

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date